

MINUTES OF THE KANSAS BOARD OF VETERINARY EXAMINERS MEETING  
FRIDAY, NOVEMBER 21, 2008, BOARD OFFICE, WAMEGO, KANSAS  
(DRAFT VERSION UNTIL SIGNED BY BOARD PRESIDENT)

This meeting of the Kansas Board of Veterinary Examiners was called to order by Board President Dr. Verle Carlson at 10:05 a.m. Dr. Carlson welcomed everyone in attendance. In addition to Dr. Carlson, Board Members Dr. Mark Olson, Dr. Vern Otte, Dr. Christen Skaer, Dr. Mary Sue Painter, Dr. Richard Barta, and Mr. Jim Correll were present. Also in attendance were agency staff members Dr. Dirk Hanson, Larry O'Hara, Cheryl Mermis, and Board General Counsel Mary Feighny.

A motion was made by Dr. Skaer to adopt the revised agenda for this meeting. This motion was seconded by Dr. Olson. This motion passed on a voice vote with no dissenting votes.

A public forum for non-agenda items was offered. No requests to address the Board had been made prior to the meeting, and no requests were made at this point in the meeting.

A motion was then made by Dr. Olson to approve the minutes of the prior Board meeting. This motion was seconded by Dr. Painter. This motion passed on a voice vote with no dissenting votes.

Implementation of a new procedure was proposed by Dr. Skaer in which a draft of the meeting minutes would be sent out to Board members during the first full week following the meeting for any additions or corrections. After the minutes were edited with additions/corrections offered, they would be published on the agency's website as draft minutes during the second full week following the meeting. A preliminary agenda for the next upcoming Board meeting would also be published at the same time as the draft minutes. The Board adopted this procedure by consensus.

Board members considered modifications proposed to regulation KAR 70-4-1(c) regarding the Board's recognition and approval of veterinary colleges. Dr. Skaer moved to adopt the proposed regulation after inserting prior to the reference to the American Veterinary Medical Association the phrase "by the Council on Education of". The motion was seconded by Dr. Olson, and passed with no dissenting votes.

The Board also reviewed information received in follow-up to the last meeting of the board relative to Western University's accreditation status. Noting that the deficiencies contributing to limited accreditation status do not appear to affect student outcomes relative to license qualifications, Dr. Olson moved the Board recognize and approve Western University as a recognized and approved college of the Board. Dr. Barta seconded the motion, which passed without dissent.

Dr. Carlson presented information to Board members regarding recently received applications for licensure. The Board members reviewed applications for licensure. In the matter of a license applicant Daisy Burns who graduated from Western University during a time of limited accreditation a motion was made by Barta to grant the license. The motion was seconded by Dr. Painter. The motion passed without dissent.

In the case of the application of Dr. Carol Wetterman, the Board had previously found the evidence of the practice of veterinary medicine submitted by Dr. Wetterman to be inadequate to document her having met the eligibility requirements. Having received further documentation from Dr. Wetterman, a motion was made by Dr. Barta to offer a consent agreement to the license applicant in which the Board would grant the application on the condition that Dr. Wetterman agree to be supervised by another licensed veterinarian for two years. The motion was seconded by Dr. Skaer, and passed with no dissenting votes.

Dr. Otte provided the Board with a status report regarding the state's prescription monitoring program ('PMP') task force. He reported that the task force had met. During its meeting, the task force had discussed contacting other states that have programs in place already to see if they have discovered any cases where 'vet hopping' has occurred. The task force discussed taking a look at veterinarian dispensing logs for 6 months, compiling the information and seeing if incidents of clients getting controlled substances from more than one veterinarian are occurring. The purpose envisioned by the task force is that if the resulting data shows no such incidents are occurring, it will be easier to demonstrate that there is not a problem of 'vet hopping' and therefore not beneficial to require veterinarians to report data to the PMP. The task force discussed that initiating these activities would be preconditioned based on receiving a source of funding to pay for the cost of completing these tasks, and with the understanding that such activities would not be initiated in the next year or two. Dr. Otte stated the task force was asking for Board's approval and facilitation of collection of the data should the process be initiated. Dr. Barta moved that board approve facilitation of collection of the data. Dr. Olson seconded the motion, which passed without dissent.

Dr. Carlson at this point welcomed Gary Reser, Executive Vice President of the Kansas Veterinary Medical Association (KVMA), and Greg Dennis, legal counsel to the KVMA.

The Board next took up the topic of registered veterinary technicians. Mr. Reser stated the KVMA had received a written communication from Dr. Jennifer Martin, Director of the Veterinary Technician Program at Colby, and had discussed the paper at its last meeting. Mr. Reser stated the KVMA plans to support efforts to expand funding of veterinary technician training programs, but plans no proposed changes to the veterinary practice act or other action.

Mr. Dennis referenced a Missouri supervision flow chart which might merit a review by the Board. Board members recommended that the flow chart be brought to next meeting for board review.

A request from the Executive Board of the Kansas Veterinary Medical Association that the Board clarify the meanings of the terms 'direct' and 'indirect supervision' was considered. Mr. Dennis mentioned that the supervision definitions found in the Kansas Veterinary Practice Act are very standard across states. The Board reviewed its current regulatory language regarding supervision that it uses as its reference for enforcement. The Board agreed the current language as written is sufficiently clear for understanding and compliance.

At 11:45 the Board meeting recessed.

At 1:40 the Board meeting reconvened. At this time the Board was joined by Ms. Christina Butler, Fiscal Analyst for Kansas Legislative Research.

The Board next conducted an open forum on the issue of pregnancy determination by blood sampling requiring a veterinarian-client-patient relationship (VCPR). Mr. Dennis expressed the opinion of the KVMA. Mr. Dennis stated that pregnancy diagnosis is specifically referenced and included within the Kansas Veterinary Practice Act definition of the 'practice of veterinary medicine'. Mr. Dennis stated that 'veterinarian-client-patient relationship' (VCPR) is also defined, and added that virtually every state has adopted the same definitions. Mr. Dennis stated that across nearly all states there is a uniform requirement that a VCPR must exist before a veterinarian practices veterinary medicine. Mr. Dennis stated that the VCPR requires the veterinarian has 'either seen the animal or is personally acquainted with care and keeping of the animal'. Mr. Dennis stated case law affirms that practicing veterinary medicine without a VCPR is a violation of the practice acts. In a case he referred to as the 'Walker' case, the veterinarian sent an employee out to see an animal, and then describe the condition of the animal to the veterinarian over the phone. The veterinarian then made a diagnosis and directed the employee on what the employee was to do. Mr. Dennis also cited a Kansas case in which his veterinary client admitted to practicing over the internet without a

VCPR, and was disciplined by the Board. Mr. Dennis answered several questions from Board members. Ms. Feighny asked Mr. Dennis to provide specific information on the cases he cited.

Mr. Reser stated the concern of the KVMA was that failure to require a VCPR for pregnancy diagnosis by blood testing would open the door for other unlawful activities like telemedicine with long distance diagnosing and treating.

The Board requested that Ms. Feighny review the information provided to her and report her findings at next board meeting. The Board directed agency staff to provide a status update to the veterinarian who had originally asked a question on the issue being considered.

The Board conducted an open forum on the question 'Can a non-veterinarian own a Kansas veterinary practice?' Mr. Dennis stated Banfield's arrangement in Kansas is to lease spaces to Kansas licensed veterinarians who own the practices. Mr. Dennis referenced the Kansas Professional Corporations Code K.S.A. 17-2708 which applies to 'qualified persons' including veterinarians as well as members of other professions. According to this statute, only members of a profession can own the practice of such a profession. An exception is allowed in that probate laws permit the executor of an estate to continue the business for a limited period of time. For example, a surviving spouse can hire a veterinarian to operate the practice of the decedent spouse for a six month term with a probate order, and can extend that term for another six months.

The consensus of the Board after hearing the information offered during the forum is that the Kansas board does not believe it is allowed for a non-veterinarian to own a veterinary practice as established both in the Kansas veterinary practice act and the Kansas professional corporations code.

The Board next heard from Christina Butler, who provided an overview of the annual budget cycle and the steps taken during each period of the cycle.

The Board then reviewed the Division of Budget's recommended changes to the agency's budgets for FY '09 and '10. Dr. Carlson moved the Board approve the preliminary letter already sent to the Governor's office appealing the recommendations and authorize the issuance of a second letter in furtherance of the appeal. Dr. Painter seconded the motion which passed without dissent.

Board Members then discussed recently completed case summaries and outcomes. Dr. Hanson provided information regarding current complaint case load.

The Board reviewed a bid solicitation proposed by agency staff seeking litigation counsel services for the agency. Dr. Olson moved, and Dr. Barta seconded a motion to approve and send out the proposed bid solicitation. The motion passed without dissent.

Upcoming Board Meeting dates and locations were discussed. The Board had previously approved the next meeting dates of the Board to be January 28, 2009 in Topeka, and April 3, 2009 in Wamego as subsequent meeting dates and locations. The Board then set Saturday, June 6<sup>th</sup> as its next meeting date, with the meeting to start at 9:30 a.m.

Reports were given on the American Association of Veterinary State Boards (AAVSB) conference by Ms. Mermis, Dr. Olson, and Dr. Painter. The Board instructed the agency to request Ms. Mermis be added to the AAVSB meeting planning committee.

Having no other business before the Board at this time, Dr. Olson moved to adjourn the meeting. Dr. Barta seconded the motion, which passed on a voice vote with no dissenting votes. This meeting was adjourned at 4:20 p.m.